

## COAL SURFACE MINING RECLAMATION REGULATIONS

**4 VAC 25-130-700.5. Definitions.**

As used throughout this chapter, the following terms have the specified meanings except where otherwise indicated.

"Abatement plan" means an individual technique or combination of techniques, the implementation of which is designed to result in reduction of the baseline pollution load.

Abatement techniques include but are not limited to:

addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation, and daylighting.

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mining and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acid that may create acid drainage or leachate.

"Act" means the Virginia Coal Surface Mining Control and Reclamation Act of 1979 as amended (Chapter 19 (§45.1-226 et seq.) of Title 45.1 of the Code of Virginia).

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"Actual improvement" means the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan: except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

"Adjacent area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

"Administratively complete application" means an application for permit approval, or approval for coal exploration where required, which the Division determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are

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conducted; any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road is a public road.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Anthracite" means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, "Standard Specification for Classification of Coals by Rank," ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference.

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"Applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the Division to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Division under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Division has determined that they comply with 4VAC25-130-816.49, 4VAC25-130-816.56, and 4VAC25-130-816.133 or 4VAC25-130-817.49, 4VAC25-130-817.56, and 4VAC25-130-817.133.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

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"Auger mining" means a method of mining coal at a cliff or highwall by drilling or cutting holes into an exposed coal seam from the highwall and transporting the coal along the auger bit to the surface.

"Authorized officer" means any person authorized to take official action on behalf of a federal agency that has administrative jurisdiction over federal lands.

"Baseline pollution load" means the characterization of the pollution material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The Division will establish in each authorization the specific parameters it deems relevant for the baseline pollution load.

"Best professional judgment" means the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Division under §§301 and 402 of the federal Water Pollution Control Act (33 USC §§1311 and 1342).

"Best technology" means measures and practices which are designed to abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

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"Best technology currently available" means equipment, devices, systems, methods, or techniques which will:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contribution of suspended solids in excess of requirements set by the applicable state or federal laws;

(b) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, terms, methods, or techniques which are currently available anywhere as determined by the Division even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Parts 816 and 817 of this chapter. Within the constraints of the permanent program, the Division shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

"Cemetery" means any area of land where human bodies are interred.

"Certification" when used in regards to construction certifications by qualified registered professional engineers, is not considered to be a warranty or guarantee.

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"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite."

"Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

"Coal lease" means a federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the federal Acquired Lands Leasing Act of 1947 (30 USC §351 et seq.).

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means, for the purposes of Part 705 of this chapter--Financial Interests of State Employees, the business of developing, producing, preparing or loading

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bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

"Coal preparation" or "coal processing" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Cognovit note" means an extraordinary note which authorizes an attorney to confess judgement against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgement against him if the obligation set forth in the note is not paid when due. Such judgement may be taken by any person holding the note, which cuts off every defense which makers of the note may otherwise have and it likewise cuts off all rights of appeal from any judgement taken on it. The note shall, at a minimum:

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- (a) Contain the date of execution.
- (b) Be payable to the "Treasurer of Virginia."
- (c) Be due and payable in the event of bond forfeiture of the permit.
- (d) Be payable in a sum certain of money.
- (e) Be signed by the makers.

"Collateral bond" means an indemnity agreement in a sum certain executed by the permittee and deposited with the Division supported by one or more of the following:

- (a) The deposit of cash in one or more federally insured accounts, payable only to the Division upon demand;
- (b) Negotiable bonds of the United States, the Commonwealth of Virginia, or a political subdivision thereof, endorsed to the order of, and placed in the possession of the Division; the bond will only be acceptable if the issue is rated "A" or better by Moody's Investor Service, Inc., or Standard and Poor's, Inc.;

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(c) Certificates of deposit issued by Virginia banks payable only to the Division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required which the Division determines to contain all information required under the Act and this chapter.

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"Contamination" means, in reference to ground water or surface water supplies receiving ground water, any impairment of water quality which makes the water unsuitable for a specific use.

"Cooperative agreement" means a cooperative agreement entered into in accordance with §523(c) of the federal Act and 30 CFR 745.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) The proposed operation;
- (b) All existing operations;
- (c) Any operation for which a permit application has been submitted to the Division; and
- (d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

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"Department" means the Department of Mines, Minerals and Energy (DMME) of Virginia.

"Diminution" means, in reference to ground or surface water supplies receiving ground water, any impairment of water quantity which makes the water unsuitable for a specific use.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

"Director" means the Director of the Department of Mines, Minerals, and Energy or his representative.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subchapter VJ is released.

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"Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

"Division" means the Division of Mined Land Reclamation of the Department of Mines, Minerals, and Energy.

"Downslope" means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included, except to the extent the water supply is for direct human consumption or human sanitation or domestic use.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means (a) any person employed by the department or other state or local government agency who performs any function or duty under the Act, and (b) consultants who

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perform any function or duty under the Act, if they perform decision-making functions for the department under the authority of the Act or regulations promulgated under the Act.

"Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Escrow account" means an account in a federally insured financial institution.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 4VAC25-130-816.102(d) and 4VAC25-130-817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the state program or a federal land program, whichever occurs first.

"Extraction of coal as an incidental part" means, for the purposes of Part 707 of this chapter, the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of Part 707, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly

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affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

"Federal Act" means the federal Surface Mining Control and Reclamation Act of 1977, as amended (Pub. L. 95-87).

"Federal land management agency" means a federal agency having administrative jurisdiction over the surface of federal lands that are subject to this chapter.

"Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Federal lands program" means a program established by the secretary pursuant to §523 of the federal Act to regulate surface coal mining and reclamation operations on federal lands.

"Federal lease bond" means the bond or equivalent security required by 43 CFR 3400 to assure compliance with the terms and conditions of a federal coal lease.

"Federal lessee protection bond" means a bond payable to the United States or the state, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure

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payment of any damages to crops or tangible improvements on federal lands, pursuant to §715 of the federal Act.

"Federal program" means a program established by the secretary pursuant to §504 of the federal Act to regulate coal exploration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within the state in accordance with the federal Act and 30 CFR Chapter VII.

"First water producing zone" means the first water zone encountered which can be monitored in a manner which indicates the effects of a surface mining operation on usable ground water.

"Fragile lands" means areas containing natural, ecologic, scientific or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features and areas of recreational value due to high environmental quality.

"Fugitive dust" means that particulate matter which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and

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reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed. Fugitive dust does not include particulate matter emitted from a duct or stack.

"Fund," as used in Subchapter VR, means the Abandoned Mine Reclamation Fund established pursuant to §45.1-261 of the Act.

"General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area and adjacent areas to include one or more watersheds containing perennial streams or ground water zones which possess useable and/or managed zones or flows, to allow an assessment of the probable cumulative impacts on the hydrologic regime.

"Government-financed construction" means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, ~~but shall not mean~~. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

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"Government financing agency" means any federal, state, regional, county, city or town unit of government, or a department, bureau, agency or office of a governmental unit or any combination of two or more governmental units or agencies, which, directly or through another unit of government, finances construction.

"Gravity discharge" means, with respect to underground coal mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of ground.

"Ground water" means subterranean water which exists within a totally saturated zone, stratum or group of strata.

"Growing season" means the period of year when climatic conditions are favorable for plant growth, common to a place or area. The period between April 15 and October 15 is the normal growing season.

"Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

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"Head-of-hollow fill" means a fill structure consisting of any material, except organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill, draining into the fill area.

"Higher or better uses" means postmining land uses that have a higher value or benefit, either economic or noneconomic, to the landowner or the community than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Historically used for cropland" means (1) lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase,

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lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (2) lands that the Division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any five out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means areas containing historic, cultural, or scientific resources.

Examples of historic lands include archaeological sites, properties listed on or eligible for listing on the State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

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"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transportation.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundments" mean all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

"Indemnity agreement" means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual

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people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

"In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Intermittent stream" means:

- (a) A stream or section of a stream that drains a watershed of at least one square mile, or
- (b) A stream or section of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

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"Irreparable damage to the environment" means any damage to the environment, in violation of the Act, or this chapter, that cannot be corrected by the permittee.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal use occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Division.

(a) "Cropland." Land used for production of crops which can be grown for harvest alone or in a rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(b) "Pastureland" or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) "Grazingland." Lands used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

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(d) "Forestry." Land used or managed for long-term production of wood, wood fiber, or wood derived products.

(e) "Residential." Land used for single and/or multiple family housing, mobile home parks, or other residential lodgings.

(f) "Industrial/Commercial." Land used for:

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) "Recreation." Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, amusement areas, as well as undeveloped areas for recreation such as hiking and canoeing.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

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(i) "Developed water resources." Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Lands eligible for re-mining" means those lands that would otherwise be eligible for expenditures under §404 or under §402(g)(4) of the federal Act.

"Leachate" means water percolating from a surface coal mining operation which contains dissolved and suspended matter.

"Leased federal coal" means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.

"Lease terms, conditions and stipulations" means all of the standard provisions of a federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

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"Material damage" in the context of 4VAC25-130-784.20 and 4VAC25-130-817.121 means:

- (a) Any functional impairment of surface lands, features, structures, or facilities;
- (b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
- (c) Any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

"Mineral Leasing Act" or "MLA" means the Mineral Leasing Act of 1920, as amended, 30 USC §181 et seq.

"Mining plan" means the plan, for mining leased federal coal, required by the Mineral Leasing Act.

"Mining supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or District Mining Supervisor or other subordinate acting under their direction.

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"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105°C.

"MSHA" means the United States Mine Safety and Health Administration.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, and provide micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, and areas of unstable geology.

"Net worth" means total assets less total liabilities. Total liabilities include, but are not limited to, funds pledged or otherwise obligated to the Commonwealth of Virginia, or to any other person at any time during the permit term. Total liabilities also include, but are not limited to, contingent liabilities that might materially affect the Commonwealth's ability to collect the amount of bond required in the event of bond forfeiture.

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"Noncommercial building" means any building other than an occupied residential dwelling that at the time subsidence occurs is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in this section. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious plants" means living plants which are declared to be noxious weeds or noxious plants pursuant to the Virginia Noxious Weed Law, Chapter 17.2 (§3.1-296.11 et seq.) of Title 3.1 of the Code of Virginia.

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Occupied residential dwelling and structures related thereto" means, for purposes of 4VAC25-130-784.20 and 4VAC25-130-817.121, any building or other structures that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation. This term also includes any building, structure, or facility installed on, above or below, or a combination thereof, the land surface if that building structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or

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improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agriculture, industrial, retail or other commercial purposes is excluded.

"Office" or "OSM" means the Office of Surface Mining Reclamation and Enforcement established under Title II of the federal Act.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other treatment facilities" means any facilities for chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized:

(a) To prevent additional contribution of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with all applicable state and federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

## COAL SURFACE MINING RECLAMATION REGULATIONS

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a) (i) Being a permittee of a surface coal mining operation; (ii) based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity; or (iii) having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

## COAL SURFACE MINING RECLAMATION REGULATIONS

- (3) Having the ability to commit the financial or real property assets or working resources of an entity;
- (4) Being a general partner in a partnership;
- (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50% of the entity; or
- (6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

"Performance bond" means a surety bond, collateral bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, and the requirements of the permit and reclamation plan.

## COAL SURFACE MINING RECLAMATION REGULATIONS

"Performing any function or duty under this Act" means decision or action, which if performed or not performed by an employee, affects the programs under the Act.

"Permanent diversion" means a diversion which is approved by the Division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permanent impoundment" means an impoundment which is approved by the Division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations issued by the Division pursuant to the Act and this chapter or by the secretary pursuant to a federal program. For the purposes of the federal lands program, permit means a permit issued by the Division under a cooperative agreement or by the OSM where there is no cooperative agreement.

"Permit application package" means a proposal to conduct surface coal mining and reclamation operations on federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the federal Act, 30 CFR Subchapter D, the Act and this chapter, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased federal coal, the Mineral Leasing Act and its implementing regulations.

## COAL SURFACE MINING RECLAMATION REGULATIONS

"Permit area" means the area of land indicated on the approved map submitted by the permittee with his application, required to be covered by the permittee's performance bond under Subchapter VJ and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit. The permit area shall include all disturbed areas except that areas adequately bonded under another permit issued pursuant to this chapter may be excluded from the permit area.

"Permittee" means a person holding or required by the Act or this chapter to hold a permit to conduct coal exploration (more than 250 tons) or surface coal mining and reclamation operations issued (a) by the Division, (b) by the director of the OSM pursuant to a federal lands program, or (c) by the OSM and the Division, where a cooperative agreement pursuant to §45.1-230 B of the Act has been executed.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agent, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

"Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

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(a) Who uses any resources of economic, recreational, aesthetic, or environmental value that is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Division; or

(b) Whose property is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Division.

The term "adversely affected" is further defined as meaning perceptibly harmed. "Aesthetics" means the consideration of that which is widely regarded to be a visibly beautiful element of a community or area.

"Piezometer" means a vertical pipe that is established in material, which is closed at the bottom, perforated from the upper limits of the material to the lower limits of the material, and which permits static water level measurements and water sampling.

"Pollution abatement area" means the part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

## COAL SURFACE MINING RECLAMATION REGULATIONS

"Pool Bond fund" means the Coal Surface Mining Reclamation Fund established pursuant to §45.1-270.1 of the Act.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval.

"Precipitation event" also includes that quantity of water coming from snow cover as snow melt in a limited period of time.

"Previously mined area" means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this chapter.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland.

"Principal shareholder" means any person who is the record or beneficial owner of 10% or more of any class of voting stock in a corporation.

"Professional geologist" means a person who is certified pursuant to Chapter 14 (§54.1-1400 et seq.) of Title 54.1 of the Code of Virginia.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

## COAL SURFACE MINING RECLAMATION REGULATIONS

"Property to be mined" means both the surface property and mineral property within the permit area and the area covered by underground workings.

"Public building" means any structure that is owned or leased, and principally used, by a governmental agency for public business or meetings.

"Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public road" means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds, and is constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) for which there is substantial (more than incidental) public use.

"Publicly owned park" means a public park that is owned by a federal, state or local governmental entity.

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"Qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 4 VAC 25-130-795.9 under the Small Operator Assistance Program (4 VAC 25-130-795.1 et seq.) and which meets the standards of 4 VAC 25-130-795.10.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the Division.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

## COAL SURFACE MINING RECLAMATION REGULATIONS

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the Division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regulatory program" means the Virginia Coal Surface Mining Control and Reclamation program (Chapter 19 (§45.1-226 et seq.) of Title 45.1 of the Code of Virginia) and rules and regulations approved by the secretary.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on

## COAL SURFACE MINING RECLAMATION REGULATIONS

both a temporary and permanent basis equivalent to premining quantity and quality.

Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing,

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or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Interior or the secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids or other pollutants from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self-bond," as provided by Part 801, of this chapter means:

(a) For an underground mining operation, a cognovit note in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to \$1 million. Such certification shall be by an independent certified public accountant in the form

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of an unqualified opinion.

(b) For a surface mining operation or associated facility, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant.

"Significant forest cover" means an existing plant community consisting predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air, or water resources" means:

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plants and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(1) Is causing such harm; or

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(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under §45.1-245 B of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Significant recreational, timber, economic, or other values incompatible with surface coal mining operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archaeological, aesthetic, fish, wildlife, plants or cultural interests.

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"Siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

"Slope" means average inclination of a surface, measured from its horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percentage or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data.

The four master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

## COAL SURFACE MINING RECLAMATION REGULATIONS

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 4VAC25-130-785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Division after consideration of soil, climate, and other characteristics of a region or the state.

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"Substantial legal and financial commitments in a surface coal mining operation" means significant investments, prior to January 4, 1977, have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

"Surface coal mining operations" means:

## COAL SURFACE MINING RECLAMATION REGULATIONS

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of §45.1-243 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to §45.1-233 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface,

## COAL SURFACE MINING RECLAMATION REGULATIONS

resulting from or incident to those activities.

"Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on August 3, 1977.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface operations and impacts incident to an underground coal mine" means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in §45.1-229 L of the Act.

"Surety bond" means an indemnity agreement in a sum certain payable to the Commonwealth of Virginia, Director--Division of Mined Land Reclamation, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Virginia.

"Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a

## COAL SURFACE MINING RECLAMATION REGULATIONS

standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the Division to remain after reclamation as part of the approved postmining land use.

"Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the Division to remain as part of the approved postmining land use.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials, or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations,

## COAL SURFACE MINING RECLAMATION REGULATIONS

which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair plant and animal life commonly present in the area that might be exposed to it.

"Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Division.

"Unanticipated event or condition," as used in 4VAC25-130-773.15, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for re-mining that was not contemplated by the applicable permit.

"Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

"Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities

## COAL SURFACE MINING RECLAMATION REGULATIONS

including hoist and ventilating ducts, areas utilized for the disposal and storage of wastes, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operations, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or failure to abate any violation of such permit, the Act, or this chapter due to indifference, lack of diligence, or lack of reasonable care.

"Usable ground water" or "ground water in use" means all ground water which is reasonably able to be used.

"Valid existing rights" means:

(a) Except for haulroads, that a person possesses a valid existing right for an area protected under §45.1-252 D of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would

## COAL SURFACE MINING RECLAMATION REGULATIONS

effect a taking of the person's property which would entitle the person to compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(b) For haulroads,

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(c) A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;

(d) Where an area comes under the protection of §45.1-252 D of the Act after August 3, 1977, valid existing rights shall be found if:

(1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or

## COAL SURFACE MINING RECLAMATION REGULATIONS

(2) The prohibition caused by §45.1-252 D of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

(e) Interpretation of the terms of the document relied upon to establish the rights to which the standard of paragraphs (a) and (d) of this definition applies shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

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"Willful violation" means an act or omission which violates the Act, this chapter, or any permit condition required by the Act, or this chapter, committed by a person who intends the result which actually occurs.

**4 VAC 25-130-795.1. Scope and purpose.**

This Part comprises the Small Operator Assistance Program (SOAP) and establishes the procedures for providing assistance to eligible operators by the ~~program administrator~~ Division. It is an elective means for the Division to satisfy the requirements of § 45.1-235 (C) of the Act. The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences and a statement of results of test borings or core samplings which are required components of the permit application under Subchapter VG.

**4 VAC 25-130-795.6. Eligibility for assistance.**

(a) An applicant is eligible for assistance if the applicant-

(1) Intends to apply for a permit pursuant to the Act;

(2) Establishes that his probable total ~~actual and~~ attributed annual production from all locations ~~during any consecutive 12-month period either during the term of his~~

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~~permit or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 100,000 tons~~ on which the operator is issued the surface coal mining permit will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant-

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a ~~5~~ 10 percent interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than ~~5~~ 10 percent of the applicant's operation;

(iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(iv) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(3) Is not restricted in any manner from receiving a permit under the Act; and

## COAL SURFACE MINING RECLAMATION REGULATIONS

- (4) Does not organize or reorganize his company solely for the purpose of obtaining assistance under the SOAP.

**4 VAC 25-130-795.7. Filing for assistance.**

Each application for assistance shall include the following information:

- (a) A statement of applicant's intent to file a permit application.
- (b) The names and addresses of -
- (1) The permit applicant; and
  - (2) The operator if different from the applicant.
- (c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under 4VAC25-130-795.6. The schedule shall include for each location -
- (1) The operator or company name under which coal is or will be mined;

## COAL SURFACE MINING RECLAMATION REGULATIONS

(2) The DMLR permit number, Division of Mines license number and Mine Safety and Health Administration (MSHA) number, if issued;

(3) The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under 4VAC25-130-795.6; and

(4) The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.

(d) A description of -

(1) The proposed mining method;

(2) The anticipated starting and termination dates of mining operations;

(3) The number of acres of land to be affected by the proposed mining operation;  
and

(4) a general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area, or in the case of underground mines the affected area, and the method by which they were calculated.

## COAL SURFACE MINING RECLAMATION REGULATIONS

(e) A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail for the assistance area which clearly shows -

(1) The area of land to be affected and the natural drainage watershed above and below the affected area;

~~(2) The names of property owners in the affected and adjacent areas;~~

~~(3) (2) The location of any existing or proposed test borings; and~~

~~(4) (3) The location and extent of known workings of any underground mines;~~

and .

~~(5) The location of existing structures and developed water resources within the affected and adjacent areas.~~

(f) Copies of documents which show that-

(1) The applicant has a legal right to enter and commence mining within the proposed permit area; and

## COAL SURFACE MINING RECLAMATION REGULATIONS

(2) A legal right of entry has been obtained for the Division and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

**4 VAC 25-130-795.8. Application approval and notice.**

~~Eligibility determinations shall be made in writing to the applicant and denials shall stipulate the reasons for the denial.~~

(a) If the Division finds the applicant eligible, the Division shall inform the applicant in writing that the application is approved.

(b) If the Division finds the applicant ineligible, the Division shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

**4 VAC 25-130-795.9. Program services and data requirements.**

(a) To the extent possible with available funds, the Division shall—(a) Select select and pay a qualified laboratory to make the determination and statement and provide other services referenced in Paragraph (b) of this section for eligible applicants who request assistance.

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(b) The Division shall ~~D~~determine the data needed for each applicant or group of applicants. Data collected and the results provided to the Division shall be sufficient to satisfy the requirements for:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analysis and the designs necessary for the determination in accordance with 4 VAC 25-130-780.21 (f), and 4 VAC 25-130-784.14 ~~(g)~~ (e) and any other applicable provisions of this chapter; ~~and~~

(2) The drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with ~~4VAC25-130-780.22 (b) and 4 VAC 25-130-784.22 (b)~~ and any other applicable provisions of this chapter.;

(3) The development of cross-section maps and plans required by 4 VAC 25-130-779.25 and 4 VAC 25-130-783.25;

(4) The collection of archeological and historic information and related plans required by 4 VAC 25-130.779.12 (b), 4 VAC 25-130-783.12 (b), 4 VAC 25-130.780.31, 4 VAC 25-130-784.17, and any other archeological and historic information required by the Division.

(5) Pre-blast surveys required by 4 VAC 25-130-780.13; and

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(6) The collection of site specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 4 VAC 25-130-780.16 and 4 VAC 25-130-784.21, and information and plans for any other environmental values required by the Division under the Act.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the applicant.

(d) Data collected under this program shall be made publicly available in accordance with 4 VAC 25-130-773.13 (d). The Division shall develop procedures for interstate coordination and exchange of data.

**4 VAC 25-130-795.10. Qualified laboratories.**

(a) Basic qualifications. To be designated a qualified laboratory under the Virginia small Operator Assistance Program, a firm shall demonstrate that it-

(1) Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

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(2) Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

(3) Meets applicable Federal or State safety and health requirements;

(4) Has analytical, monitoring and measuring equipment capable of meeting applicable standards; ~~and~~

(5) Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of 4 VAC 25-130-780.21, 4 VAC 25-130-780.22, 4 VAC 25-130-784.14 and 4 VAC 25-130-784.22 and any other applicable provisions of this chapter: (other appropriate methods or guidelines for data acquisition may be approved by the Division); and

(6) Has the capability of performing services for either the determination or statement referenced in 4 VAC 25-130-795.9 (b).

(b) Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and

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they meet all applicable requirements for area of specialization pursuant to the program and this section specified by the Division.

~~(c) The Virginia Small Operator Assistance laboratory qualification requirements will only be applicable to firms requesting Virginia qualification. Firms located out of state which have been qualified under another state's Small Operator Assistance Program qualification procedures may be deemed qualified in Virginia, provided documentation of this qualification is provided to the Division for review and the qualification has been granted within the 12 months preceding the request. All firms who request a Virginia laboratory qualification must be licensed to do business in Virginia.~~

~~(d) Review and reapproval of all laboratory qualifications shall be made every 12 months.~~

**4 VAC 25-130-795.11. Assistance funding.**

(a) Use of funds. Funds specifically authorized for this program shall be used to provide the services specified in 4VAC25-130-795.9 and shall not be used to cover administrative expenses.

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(b) Allocation of funds. The Division is ~~authorized to~~ shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this Part.

**4 VAC 25-130-795.12. Applicant liability.**

(a) The ~~applicant~~ coal operator who has received assistance pursuant to 4 VAC 25-130-795.9 shall reimburse the Division for the cost of the ~~laboratory~~ services performed pursuant to this Part rendered if-;

(1) The applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) The Division finds that the ~~applicant's~~ operator's actual and attributed annual production of coal for all locations exceeds ~~100,000~~ 300,000 tons during ~~any consecutive~~ the 12-month 12-months period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter; immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

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(3) The mining rights granted under the permit ~~is~~ are sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the ~~100,000~~ 300,000 ton annual production limit during ~~any consecutive~~ any 12-months ~~period of~~ the remaining term of the permit immediately following the date on which the permit was originally issued. Under this Paragraph the applicant and its successor are jointly and severally obligated to reimburse the Division.

~~(b) The reporting of the applicant's actual and attributed annual production shall begin with submission of notarized production reports within 30 days of the end of each calendar quarter during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter. This report is to be submitted to the attention of the Small Operator Assistance Coordinator at the Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219.~~

~~(c) For the purposes of this Part, the term "attributed production" shall be that production which the applicant has declared pursuant to eligibility requirements under 4VAC25-130-795.6 at the time of application for assistance.~~

~~(d)~~ (b) The Division may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.